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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/664,993	09/18/2000	Gangfeng Cai	2039.006100	4102

7590 04/24/2002

Williams Morgan & Amerson PC
7676 Hillmont
Suite 250
Houston, TX 77040

EXAMINER

NOLAN, SANDRA M

ART UNIT	PAPER NUMBER
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1772

12

DATE MAILED: 04/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/664,993

Applicant(s)

CAI ET AL.

Examiner

Sandra M. Nolan

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 April 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: (See the attachment.).
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-17.

Claim(s) withdrawn from consideration: None.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Sandra M. Nolan

423-02

ATTACHMENT TO ADVISORY ACTION

Claims

1. The response dated April 11, 2002 (Paper No. 11) contained no amendment to the claims. Claims 1-17 are pending.

Rejections Maintained

2. The 35 USC 103 rejection of claims 1-12 and 16-17, as unpatentable over Ching (US 5,744,246) in view of Nordstrom (US 3,536,687), as referred to in section 3 of the final rejection (Paper No. 10), is maintained for reasons of record.
3. The 35 USC 103 rejections of claims 13-15, as unpatentable over Ching and Nordstrom taken with Katsumoto et al (US 6,139,770), as explained in section 4 of Paper No. 10, is maintained for reasons of record.

Response to Arguments

4. Applicant's arguments filed in Paper No. 11 have been fully considered but they are not persuasive.

The arguments will be responded to in the order in which they were presented in Paper No. 11.

On pages 2 and 3, applicants argue that one of ordinary skill in the art would recognize certain features—such as coextensive layers and the use of PET or other polymers as the innermost layer—to be present in the claimed containers.

However, applicants are improperly arguing limitations that are not recited in the claims. See MPEP 2145 (VI).

Also, on pages 2 and 3, applicants seem to infer that the Office has the burden of showing that the invention is obvious over the references. The Office has already met its 35 USC 103 burden by making a *prima facie* case in Paper No. 8 (the November 7, 2001 action).

On page 3, applicants argue that Ching's ribbon is not a layer because it is not called a layer.

However, the ribbons are used in making multilayer constructs, which constructs are useful in packaging (see Figure 4 of Ching).

On page 3, applicants argue that Nordstrom does not teach containers having the multilayer structure recited in claim 1.

However, Nordstrom teaches that its polycyclohexenes may be made into films (col. 4, line 45). Since Ching's constructs may also be used in films (col. 8, line 15), the references are properly combined for suggesting the use of the Nordstrom polymers in constructs, such as Ching's.

On page 4, applicants argue that Katsumoto's cannot teach or suggest the containers claimed because it deals with photoinitiators and not with the multilayer system claimed here.

However, in the absence of a convincing showing of unexpected results, combining Katsumoto's teachings with those of Ching and Nordstrom to suggest that photoinitiators can be used with oxygen scavenging materials, such as those suggested/taught by the combination of Ching and Nordstrom, is proper under 35 USC 103.

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Conclusion

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/305-5436. The fax number for after final communications is 703/872-9310. The receptionist answers 703/308-0661.

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April 23, 2002

Harold Pyon
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

4/23/02